

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolander (US 4,743,259) in view of Kraus (US 5,152,744).

Bolander discloses a surgical procedure involving the steps of removing tissue from a first location in the patient's body ("second quantity of milled bone," Abstract, also see col. 3, lines 15-16), separating one or more components from at least a portion of the tissue removed from the patient's body ("guanidine-extracted bone proteins," Abstract), and implanting the tissue at a second location in the patient's body after separating one or more components from at least a portion of the tissue (see col. 3, lines 24-34).

Bolander discloses the claimed invention except for the step of removing tissue including rotating a cutting tool under the influence of force transmitted through an flexible elongated member enclosed by a tubular member and moving the body tissue under the influence of suction and wherein said step of cutting body tissue includes the step of moving the body tissue under the influence of suction.

Kraus discloses the step of removing tissue including rotating a cutting tool under the influence of force transmitted through an flexible elongated member enclosed by a tubular member and moving the body tissue under the influence of suction and wherein said step of cutting body tissue includes the step of moving the body tissue under the influence of suction as an effective way to remove bodily tissue.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method of Bolander with the step of removing tissue including rotating a cutting tool under the influence of force transmitted through an flexible elongated member enclosed by a tubular member and moving the body tissue under the influence of suction and wherein said step of cutting body tissue includes the step of moving the body tissue under the influence of suction in view of Kraus to remove tissue effectively.

Allowable Subject Matter

Claims 36-39, 41-44, 46, 47, 49, 57-60, 69-71 and 73-96 are allowed.

Upon further review and consideration of the prior art, the indicated allowability to claims 40 is withdrawn. See above rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is (571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/
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